



**REVIEW OF PESTICIDE  
LEGISLATION AND  
POLICIES  
IN  
WESTERN AUSTRALIA**

**DISCUSSION PAPER**

September 2005



## FOREWORD

The Western Australian government is committed to the continued development of a comprehensive regulatory framework for the safe and effective use of pesticides in this State.

To this end, the Department of Health is undertaking a review of Western Australian pesticides legislation and policies to ensure that they are robust, workable and nationally uniform. The first step in the review process is the production of this Public Discussion Paper to enable industry and the wider community to comment on a range of pesticide control-of-use issues.

The issues addressed by the Discussion Paper underpin the principal legislation, the *Health (Pesticides) Regulations 1956*, and complementary legislation administered by the Department of Agriculture.

It is appropriate that this review is being conducted at this time. The *Health Act 1911* is being reviewed and a Public Discussion Paper has been released for comment. Western Australia's control –of-use legislation must keep abreast of changes in agricultural development and diversity, and also provide certainty to the community that pesticides are regulated and handled in a manner which safeguards the health of individuals, the community and the environment.

Pesticides regulation is an area that depends on co-operation across governments and between government departments. Co-operation has been the hallmark of the management of pesticides in Western Australia, and this is reflected in the secondment of Mr Peter Rutherford from the Department of Agriculture to the Department of Health for the purpose of conducting this Review. I thank the Department of Agriculture for making this possible.

The public consultation period for which this Discussion Paper has been prepared is for three months, and I commend it to you for your detailed consideration and response.



Dr Neale Fong  
A/Director General



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## 1. INTRODUCTION

In 2004, the Western Australian Pesticides Advisory Committee (PeAC) decided to conduct a Review of pesticide legislation and policies as part of its strategic plan. The reasons for this decision were that:

- The *Health Act 1911* itself was under review, and a public discussion paper on a general framework for the proposed new public health legislation provided an opportunity to “test” its application to a range of pesticide issues.
- There was concern that control of use of pesticides in Western Australia was falling behind that of other jurisdictions.
- Recent spraydrift incidents had highlighted deficiencies in the legislation, and
- The last review was over 10 years ago when the (then) National Registration Authority was formed to assume responsibility for pesticide registration,

The Review is being carried out by Mr Peter Rutherford, Chemicals Coordinator of the Department of Agriculture, who has been seconded to the Department of Health for this purpose.

Pesticides are widely used in the community and many people have strong views on how they should be controlled. Therefore, an important part of this Review is the opportunity afforded to stakeholders, interested parties and the general public to express their views on the various issues under consideration. This is being achieved through the use of a Discussion Paper, which will provide information on a range of issues and offer some alternative options for their management. However, the Discussion Paper does not claim to have all the answers.

*The questions posed throughout the Discussion Paper are for guidance only. If you believe that there are pesticide control-of-use issues, or options, that have not been addressed, please bring them up in your submission.*

The substantive part of the Discussion Paper is in three sections. These can be described briefly as Background, Structural Issues, and Operational Issues.

- Background provides a brief overview of the national and Western Australian arrangements currently in place to manage pesticides.
- Structural Issues are those policy issues that explore different options that the government could use to administer pesticide controls.
- Operational Issues are those that impact directly on the use of pesticides, and the safety of the applicator, the bystander and the environment.

This Discussion Paper is being widely distributed, including access on the Department of Health website, to canvas as broad a cross section of views as possible.

Submissions will be collated by the Reviewer and will be used as resource material for a draft Policy Paper which will be made available for comment by people making a submission, stakeholders and the general public.

## **SUBMISSIONS:**

Written submissions in relation to this Discussion Paper are invited from stakeholders, interested parties and the general public. Submissions should be forwarded to:

Mr Peter Rutherford  
Pesticide Legislation Review  
Office of the Chief Medical Adviser  
Department of Health  
PO Box 8172  
Perth Business Centre WA 6849

Alternatively, submissions may be delivered to the Department of Health, 189 Royal Street, East Perth, W.A. 6004 or forwarded by email to [Peter.Rutherford@health.wa.gov.au](mailto:Peter.Rutherford@health.wa.gov.au)

Submissions will be received until close of business on 16 December 2005.

If you have any queries about this Discussion Paper, please contact Mr Rutherford at the above address or by telephone, fax or email:

Telephone : (08) 9222 4279

Fax : (08) 9222 2322

Email : [Peter.Rutherford@health.wa.gov.au](mailto:Peter.Rutherford@health.wa.gov.au)

The Reviewer will be available to meet with individuals and groups on request to provide further information and amplification of the Review and its possible outcomes.

Further copies of the Discussion Paper can be obtained from the Reviewer or from the web sites of the Department of Health, at [www.health.wa.gov.au](http://www.health.wa.gov.au)

### **PLEASE NOTE:**

*Respondents are advised that the contents of submissions will not be treated as confidential unless they are marked 'Confidential' and they are capable of being classified as such under the Freedom of Information Act 1992. Such respondents are advised to discuss this with the reviewer at the time of submission.*

### **DISCLAIMER:**

*This paper has been prepared to facilitate public discussion, and does not necessarily reflect the views of the Department of Health.*

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## 2. BACKGROUND TO THE MANAGEMENT OF PESTICIDES IN AUSTRALIA

Since March 1995, responsibility for the legislative management of pesticides in Australia is shared between the Commonwealth and the States/Territories through the National Registration Scheme for Agricultural and Veterinary Chemicals. The Commonwealth is responsible for the regulation of agricultural and veterinary chemicals from their import or manufacture up to and including the point of retail sale, through the *Agricultural and Veterinary Chemicals Code Act 1994 (Cwlth)*, which is administered by the Australian Pesticides and Veterinary Medicines Authority (APVMA) in Canberra. This Commonwealth Agvet Code is enabled in Western Australia through the *Agricultural and Veterinary Chemicals (Western Australia) Code Act 1995 (WA)*.

### Registration of Pesticides

The main role of the APVMA is the registration of agricultural and veterinary chemicals. This process involves the scientific evaluation of each chemical product for human, occupational and environmental safety, for potential impact on trade, and for crop safety and efficacy on the pest. An integral part of registration is the requirement that precise instructions for the use of the product be part of the approved label and any material accompanying the product when sold. These instructions not only include how to use the product, but information on safety precautions, and restrictions on its use and disposal.

Other Government agencies assist the APVMA to evaluate pesticides, including:

- Office of Chemical Safety (Commonwealth Department of Health and Ageing), which advises on toxicological issues and worker safety.
- Commonwealth Department of the Environment and Heritage, which advises on minimising the impact of pesticides on the environment.
- State/Territory departments and independent reviewers advise on how well the pesticides control pests and diseases.

The APVMA invites public comment on registration applications before making its decision to register. It also invites members of the public to participate in its programs such as reporting adverse chemical experiences through the Adverse Experience Reporting Programs (AERP), and contributing to chemical reviews.

Product registration is also designed so that the use of pesticides does not adversely affect current domestic and international food safety standards and future prospects for ecologically sustained development in Australia.

The APVMA sets maximum residue limits (MRLs) for pesticides in agricultural commodities. That is, the highest concentration of a pesticide residue permitted in food or animal feed. MRLs are used to check that chemical users

are following product label directions and they provide a means for identifying where chemical management systems are not working as intended. MRLs are normally set well below the lowest level that would harm health. Because of this, exceeding an MRL is much more likely to indicate that a pesticide has been misused, rather than representing an immediate public health or safety concern.

The APVMA and Food Standards Australia New Zealand (FSANZ) work together to ensure that the use of chemical products and the level of any residues in food are safe. When a new MRL is set by the APVMA, it notifies FSANZ so that it can be considered for listing in the Food Standards Code. This listing is necessary before food products containing residues can be legally sold in Australia. When incorporated into the Food Standards Code, the MRL is the highest level of a chemical residue that is legally permitted in a food.

The APVMA reviews chemical products that have been on the market for many years to ensure they meet the latest standards. Its national compliance program also ensures chemical products continue to meet their registration conditions.

The Western Australian Departments of Agriculture and Health provide significant input into the national registration process by co-ordinating efficacy reviews, reviewing permit applications for use in WA, and providing input into chemical reviews.

### **Control of Use**

The role of the States and Territories is to regulate controls over the use of pesticides, ie from the point of retail sale to the user, to the final point of use of the chemical or its disposal.

The legislative bases for this regulatory activity vary considerably. Most jurisdictions control pesticide use through legislation administered by their respective Departments of Agriculture or Primary Industry, or equivalent agencies. However, in New South Wales, the *Pesticides Act 1999* is administered by the Department of Environment and Conservation. In Western Australia, the *Health (Pesticides) Regulations 1956* made under the *Health Act 1911* are administered by the Department of Health.

The extent of the controls exercised by jurisdictions under their respective legislation is largely the same, however, there are some differences. For example, in Victoria it is not an offence to use a pesticide off-label unless that use is specifically prohibited by regulation (and only a few are). This particular issue will be discussed in more detail later in this paper. As another example, NSW is currently the only jurisdiction that requires all farmers and commercial applicators of chemicals to be trained, although this is under consideration in other jurisdictions.

The table at Appendix 1 shows the similarities and differences between the various jurisdictions and the extent to which they address elements of control of use of pesticides.

Control of use of pesticides is also impacted by Poisons legislation, and by the Transport and Storage of Dangerous Goods legislation in each jurisdiction, however, these aspects are outside the scope of this Review and will not be considered further.

### **Western Australian Arrangements**

In Western Australia, control of use of pesticides is enforced through the *Health (Pesticides) Regulations 1956* which are administered by the Department of Health. Other relevant control-of-use legislation, such as the *Aerial Spraying Control Act 1966*, the *Agricultural Produce (Chemical Residues) Act 1983*, and the *Agriculture and Related Resources (Spraying Restrictions) Regulations 1979* made under the *Agriculture and Related Resources Protection Act 1976*, is administered by the Department of Agriculture.

These last named three pieces of legislation are about to be subsumed into a new Bill, the Biosecurity and Agriculture Management Bill (BAMB), which is to be introduced into State Parliament in the Spring session of 2005. The Bill will replace a number of existing statutes and provide for much needed reforms. It will also include some new pesticide control provisions, which will be discussed under the relevant headings.

These Acts and Regulations impose regulatory controls on the handling and use of pesticides, including provisions to –

- Prohibit the use of unregistered and unpermitted products;
- Restrict and prohibit the use of specific chemicals or types of chemicals;
- Require strict compliance with approved product label directions and permit conditions;
- Licence businesses providing commercial pest control services and their operational employees, including aerial operators;
- Prevent and deal with contaminated produce;
- Protect prescribed crops from damage by certain agricultural chemicals.

The Pesticides Advisory Committee (PeAC) is established and constituted under Section 246 of the *Health Act 1911*. It comprises the Executive Director, Public Health (EDPH) and the Directors General of the Departments of Agriculture, Environment, Consumer and Employment Protection (Worksafe Division), and the Chemistry Centre, or their nominees. The Committee is chaired by the EDPH. Executive support is provided by the Department of Health.

The PeAC provides advice to the Executive Director Public Health on any matter concerning pesticides, including recommendations for legislative change and regulatory controls. The role of the PeAC will be discussed in more detail later in the paper.

### **3. STRUCTURAL ISSUES**

As described previously, this section of the paper examines some policy issues that the government will need to consider for the administration of pesticide controls.

#### **Opportunities for Reform**

There is an increasing demand world-wide for pesticides to be used responsibly so that agricultural produce is wholesome, that environmental impacts can be minimised and that effective chemicals will continue to be available for agriculture, and other legitimate purposes.

Therefore, management of pesticides must be considered from both the short and long term perspectives. The former is concerned with effective day-to-day operations associated with agricultural practices, however, the continuance of such practices depends on the effectiveness of longer term management of pesticides residues in food chains and the environment.

Community perceptions and market responses, particularly from export markets, are now exerting greater influence on the profitability of primary industries. On domestic markets, major chain stores require food suppliers to have implemented Quality Assurance programs that define acceptable quality and safety standards for produce, while export markets have introduced more stringent programs for monitoring MRL's for pesticides in food products.

Governments have traditionally assumed responsibility for establishing controls over use of pesticides. The aim of this strategy has been to ensure that the use of pesticides is appropriate and is carried out in a manner that will achieve food and fibre quality and safety, satisfy market access requirements and meet consumer and community needs for human and environmental health.

These arrangements, at all levels of government, have been accepted by the community in the past because of a belief that regulation is a government function administered in the community interest.

However, contemporary industry and community attitudes are moving away from total reliance on government regulation where there is a capacity for some form of industry self-regulation. Good examples are the successful implementation of specific industry-driven Quality Assurance systems for the production of safe food, and market access, and the successful Agsafe Accreditation Scheme which regulates the agvet chemical retail and distribution industry. Total reliance on regulation of pesticide use by government may therefore not be the most effective way of meeting the objectives of responsible chemical use, although it is likely that some form of legislation will always be required, particularly when community or environmental protection is needed.

It is possible that legislation might be used to establish “good operating principles” for responsible chemical use, including calling up industry “codes of practice” or similar mechanisms to manage operational issues, for example training/accreditation and spray drift control. Government intervention should only be used when necessary, for example, enforcing penalties for non-compliance with industry codes and standards. From a legislative point of view, all that needs to be done is for the legislation to say that pesticides must be used according to a ‘Code of Practice’, and that it would be an offence if any damage resulted as a consequence of not following the Code.

Other alternatives may also arise for consideration during the course of the review.

The task of the review is to identify appropriate regulatory mechanisms and policies that meet future requirements for the continuing use of pesticides in Western Australia. The review will suggest mechanisms to achieve the goals of responsible chemical use with the least restriction and cost to individuals and industry. **However, it is important that all users of pesticides must accept that they are responsible for safe chemical use, and that this is not a role for government alone.**

1. **What is an appropriate model for regulating the future use of pesticides in Western Australia?**
2. **If a model for government/industry co-regulation is favoured, to what extent might each of these sectors be involved?**
3. **How can legislation strengthen industry self-regulation schemes?**

### **Health Act or New Act?**

The predominant legislation for control of use of pesticides in WA is the *Health Act 1911* and the *Health (Pesticides) Regulations 1956*. In addition to those legislative controls certain provisions of the *Poisons Act and Regulations* and legislation administered by the Department of Agriculture, namely the *Aerial Spraying Control Act 1966*, and the *Agriculture and Related Resources (Spraying Restrictions) Regulations 1979*, and the *Agricultural Produce (Chemical Residues) Act 1983*, support that process. These last named pieces of legislation will be subsumed into the proposed new legislation, the Biosecurity and Agriculture Management Bill, which is in the final stages of development by the Department of Agriculture.

In addition to these pieces of legislation there are others which support control of use, such as Dangerous Goods (Storage and Transport) and Occupational Safety and Health legislation, which are administered by the Department of Industry and Resources and the Department of Consumer and Employment Protection, respectively.

The advantage of using the Health Act as the legislative vehicle for pesticide controls is that it provides comfort to the community that the use of pesticides is being managed for public health and safety. The disadvantage is that the current Health Act is limited to regulatory controls that protect and safeguard public health, and cannot be used for environmental or agricultural (ie crop damage) reasons. In addition, agricultural industries account for most of the pesticide used in WA, and authorised officers under the Health Act, including Local Government Environmental Health Officers, are relatively unfamiliar with agricultural practices and may not be able to effectively ensure that growers comply with regulations. More will be said about this later in the paper.

The issue here is whether legislative reforms should be made to the Health Act, either in its existing form or in the “new” form which is being considered, or should new stand-alone pesticide legislation be developed. If the latter option is preferred, then perhaps the opportunity to consolidate other legislation, such as the agricultural chemicals parts of the proposed Biosecurity and Agriculture Management Bill, into such an Act, should also be considered.

A Public Discussion paper on the structure of the new Public Health Act has recently been released. (“New Public Health Act for Western Australia – a Discussion Paper (June 2005)” copies of which can be accessed on <http://www.health.wa.gov.au/NewPublicHealthAct/>). The new Act will be able to declare certain activities - in this case pesticide use - “a risk to health”. This should open up the prospect of a broader range of controls, through Orders, Policies or Codes drawn up under the new Act, where they operate to minimise risk.

4. **Would regulatory control over pesticides in WA be improved by amendments to the *Health Act 1911* (or its replacement) or by the development of new stand-alone ‘Pesticide’ legislation?**
5. **If new legislation is preferred, should it be used to consolidate other relevant agricultural/pesticide legislation, such as the chemical regulations in the BAMB etc?**

### **Role of State Government Agencies and Cross – Authorisation of Officers**

Currently, most of the compliance work associated with pesticide incidents is carried out by officers of the Department of Health or by local government Environmental Health Officers (EHO’s). Most of the incidents that are reported to the government involve the pest control industry, mainly in urban areas, and are related to either human health or consumer protection. The relatively few reported incidents that originate from agricultural use are also usually investigated by the Department of Health and local government EHO’s despite the fact that there may be environmental and crop damage aspects to

be considered. However, it is uncommon for officers of the Department of Agriculture and the Department of Environment to become involved with these incidents. Occasionally officers of the Department of Fisheries are involved where allegations of aquaculture damage is involved.

The issue revolves around the relative roles of government agencies in their response to pesticide incidents. Perhaps the most technically appropriate government agency should be responsible for responding to pesticide incidents. This means that crop damage, environmental damage, occupational health and public health cases would be the responsibility of the Departments of Agriculture, Environment, Worksafe and Health respectively. The problem here is that not all of these agencies have the powers to intervene under appropriate legislation. This approach also “dilutes” the expertise in managing a response across a number of agencies.

An alternative approach is for one agency (the agency with most of the legislative power? the agency with most technical expertise?) to assume the lead response role in all cases and to call upon other agencies to assist in a technical capacity, as required by the circumstances of the case. The lead agency could be assisted in their endeavours by cross-authorising officers from the other agencies to ensure that these officers had powers of entry and evidence gathering etc. This issue is discussed further under “Incident Reporting”.

Local government EHO’s are already authorised under the Health Act, however it should be possible for Department of Agriculture Biosecurity Officers, Department of Environment, Department of Conservation and Land Management and Department of Fisheries officers to be so authorised as well. In addition, it may be valuable for Water Corporation officers who have a role in managing potable water catchments to also have an authorised role under the pesticide legislation. Government resources are limited, and cross-authorisation may be a way of utilising these resources to the best advantage.

Appendix 2 provides a summary of the roles of State government agencies and the legislation they administer.

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| <ol style="list-style-type: none"><li><b>6. What should be the roles of various State government agencies in the investigation (and possibly prosecution) of pesticide incidents?</b></li><li><b>7. Is cross-authorisation a realistic option to handle pesticide incidents and utilise government resources efficiently? What alternative options are possible?</b></li></ol> |
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### **The Pesticides Advisory Committee**

As previously mentioned, the Pesticides Advisory Committee (PeAC) is a statutory committee established under Section 246 of the *Health Act 1911*. It

was first established when the *Health (Pesticides) Regulations 1956* were created. The Committee consists of the Chairman, who is the Executive Director Public Health (EDPH), or a nominated medical officer, the Secretary who is an officer of the Department of Health, and the Directors General of the Departments of Agriculture, Environment, Chemistry Centre and Worksafe WA or their nominees. Deputy members are appointed by the Minister for Health. All members of the Committee are government officers, however, the Committee may co-opt other people as required from time to time.

The role of the PeAC is defined in Section 246 BA of the Act, and can be summarised as: advising the EDPH on “any matter whatsoever concerning pesticides, whether that matter is referred to it by the EDPH or not.” In addition, the PeAC has the “power to consider and adopt or reject recommendations about pesticides made by a prescribed body” (none are prescribed at present), and “exercise any power or perform any duty conferred or imposed on it by regulations....”.

The PeAC used to meet monthly at a time when its main role was to register pesticide products for use in Western Australia. This activity ceased in 1995 with the creation of the then National Registration Authority, now the Australian Pesticides and Veterinary Medicines Authority (APVMA). The Committee now meets quarterly and is concerned with control of use issues, including the consideration of amendments to the Regulations, as required.

A possible new role for the PeAC is that of performance measurement, that is, the measurement of how well the pesticide regulatory system is working to manage the risks of pesticide use. In order to do this, a number of performance indicators will need to be identified. This work is being developed by the national Product Safety and Integrity Committee (PSIC), of which WA is a member. The PSIC has identified ten performance indicator measurements which could be effective in providing a measure of the system, both for WA, and nationally when combined with measurements from other jurisdictions. At this time, the work of PSIC is still in draft form, and details are not yet available.

However, in order to be able to carry out this work effectively, the membership of the PeAC will need to include all government agencies and other bodies that can provide the data required.

All other jurisdictions, except South Australia, have a similar statutory Committee which deliberates pesticide control of use policy issues.

The equivalent statutory bodies in Queensland, New South Wales and Victoria are the “Agricultural Chemicals Distribution Control Board”, the “Pesticides Implementation Committee”, and the “Agricultural Chemical Advisory Committee” respectively.

Tasmania has a two tiered statutory structure consisting of the Agricultural, Silvicultural and Veterinary Chemicals Council comprising the Directors General (or their nominees) of the agencies responsible for agriculture, food

and the environment, respectively, and the Tasmanian Agricultural and Veterinary Chemicals Advisory Committee, consisting of the Registrar of Chemical Products and eight other members representing regulatory, veterinary, agricultural, applicator and consumers and other stakeholder interests. The Advisory Committee reports to the Council.

The WA PeAC is now the only state pesticides committee that does not have stakeholder representation.

The original reason for the membership of the PeAC being limited to government officers was to ensure that regulatory amendments and other administrative decisions could be implemented efficiently and confidentially. However, the community today expects a high level of transparency in government decision-making and a case can be made for enlarging the membership of the PeAC to include key stakeholders.

There may be more appropriate ways of providing high level advice, coordination and community access on pesticide control of use issues than through the PeAC. It maybe that a different (non-statutory?) body is required, however, it is worth noting that the equivalent bodies in other jurisdictions are all statutory.

- 8. Is there a continuing role in WA for a high level advisory Committee?**
- 9. If there is, what should be its future purpose?**
- 10. How should the membership of such a Committee be structured?**
- 11. What performance indicators would provide an effective measurement of the pesticide regulatory system?**

## 4. OPERATIONAL ISSUES

### Risk Management

This section of this Discussion Paper deals with operational issues that directly impact upon the pesticide user, the bystander and the environment. Throughout the discussion, the underpinning assumption is that controls over pesticide use are proposed because a risk has been identified that can be reasonably mitigated.

Clearly, high risk activities should be more carefully and stringently controlled than low risk activities, particularly where regulatory resources are scarce. In addition, an easily achievable control (such as training) can mitigate a whole range of risks. In such cases the cost of ensuring compliance with the control is likely to be a good investment of resources.

It is a basic assumption that everyone that applies chemicals must take responsibility for the use of that chemical, including any unintended effects, whether on or off target. However, there will always be special situations that need regulatory protection, particularly for public health or environmental reasons. This is covered in more detail later in the paper.

### Complying with registered or permitted label conditions

Label instructions provide pesticide users with specific directions for the use of a registered pesticide product. These products and their labels are registered with the APVMA under the *Agricultural and Veterinary Chemicals Code Act 1994 (Cwlth)*. This legislation also allows the APVMA to issue a Permit for “off-label” use, on application. Permits can be issued for trial, emergency and minor –use purposes. The former two types of permits are self-explanatory, and a minor-use permit is one that allows a use that would otherwise be in breach of a State or Territory law – in the case of WA, the *Health (Pesticides) Regulations 1956*. In practice, this permit approves extensions to existing product label conditions, usually involving new (ie unregistered) pests or crops.

Regulation 19 of the above Regulations, prohibits the possession and/or use of an unregistered pesticide.

Regulation 20 C, which is an important regulation, is reproduced in the box below:

**20 C. Application of pesticides to be in accordance with labels**

*A person shall not apply, or cause or permit to be applied, a registered pesticide –*

- (a) at a frequency or rate of active ingredient in excess of the recommended frequency or rate of application;*
- (b) otherwise than in accordance with any direction or precaution;*  
*or*
- (c) for a use other than a use,*

*shown on the approved label for containers of the registered pesticide, unless the registered pesticide is applied –*

- (d) with the permission in writing of the Executive Director, Public Health; and*
- (e) subject to any conditions on the application of that registered pesticide imposed in writing by the Executive Director, Public Health, or in accordance with a permit issued under section 114 of the Agvet Code of Western Australia.*

In interpreting this Regulation, there is a view in WA that it is therefore legal to use a pesticide:

- At a lower rate of application,
- At a lower concentration of active ingredient
- At a lower frequency of application
- Only for a registered crop
- Only for a registered pest
- So long as all the other conditions on the label are met.

However, this view is by no means universally shared. The controversy is due to the ambiguity of the wording of Regulation 20 C.

The stringency of these regulations provides the community with assurance that pesticides used in WA are safe and effective when used as directed and will not result in adverse effects on humans, the environment or trade. However, it may be possible to 'liberalise' some of these prohibitions without increasing the risk of causing an adverse effect.

For example, the prohibition of using a pesticide for an unregistered pest could be removed, so long as it was used only on a registered crop. If the crop is registered, it means that provided the label rate and withholding period are not exceeded, the Maximum Residue Limit (MRL) will apply no matter what pest is being controlled. However, it is very risky to use a pesticide for an unregistered crop as a MRL may not have been established for that crop, and the safety of that crop as a food may be compromised.

The freedom to use a registered pesticide for any pest, or to use it at lower than label rates, would be of economic benefit to many agricultural users. In addition, there would be environmental benefits from using the lowest rate possible, commensurate with effective weed or pest control. This is particularly true in the case of broadscale use of herbicides for weed control.

However, growers must be aware that the registered rates of application for agricultural herbicides used in Australia are already low by world standards, and that this practice will have the potential to increase chemical resistance in the pest. They must be prepared to implement integrated pest management regimes to combat this problem, such as using animal grazing or using a different chemical group each time the paddock is cropped, and not using the same chemical continuously.

It could also be argued that the onset of pesticide resistance should be minimised by legally allowing only the label rate to be used. If resistance was an issue that needed regulatory management, then an array of legislation would be needed, including a prohibition on using the same chemical group continuously. The same argument should be applied to farmers who wish to use less than label rates – the management of resistance should be left to the farmer to manage, using label information for guidance.

It is acknowledged that for the urban pest control industry, it is important for public health reasons that the label be followed exactly, ie that the chemical is registered for the pest and the situation, and that rates of application not be reduced. Many pest control products already recognise this need and include statements such as “Do not use this product at less than indicated label rates”.

Legislation could therefore be drafted that allows the use of lower than label rates, unless otherwise specified on the label. This would help to differentiate between agricultural and non-agricultural uses of pesticides.

It is noteworthy that in all other jurisdictions, except in South Australia, the use of lower than label rates is allowed under their respective regulations. In South Australia, amendments are proposed to also allow the use of pesticides at below label rates. Interestingly, South Australian regulations also allow (by exemption) the off-label use of pesticides without a permit by “accredited participants of an approved quality assurance scheme in horticulture”, and the user of a home garden product. These exemptions are conditional on the use of the pesticide at a rate or frequency no higher than the highest rate or frequency on the label for any crop.

The central issue is that, in agricultural situations only, there are benefits to the grower, the agricultural industry, and the environment from allowing the use of pesticides at below label rates, and for pests and weeds not listed on the label. The attendant risk of pesticide resistance can be managed by good agricultural practice.

## **The ‘Victorian Approach’ to off-label use of pesticides**

In Victoria, pesticide laws allow the use of a pesticide for any purpose, whether that use is registered or not, so long as:

- The pesticide is registered for at least one use (eg, a crop) in Victoria,
- The pesticide is not one of about 25 prescribed restricted pesticides, or is a Schedule 7 poison,
- The intended use is not specifically prohibited in Victoria, or if it is at a greater rate, or shorter interval between uses, and
- The intended use does not lead to a residue which exceeds the MRL for that crop.

This regulatory regime allows a great deal of freedom to the pesticide user in Victoria in that he/she does not have to apply for a permit to use a pesticide for most off label uses, as the regulations render a Permit unnecessary. However, the regime places the responsibility for minimising public health and environmental risk squarely on the shoulders of the user, who is probably the least informed and least able to make a value judgement on the relative risk he/she is undertaking. This approach also has the effect of minimising the potential liability to the state government of any adverse outcomes arising from the use of pesticides.

In addition, Victoria is able to adopt this approach as all other jurisdictions require full registration of all crops and other situations, and thus the Victorian user has the label to guide them. If all States and Territories were to adopt the Victorian approach, then the APVMA would only need to register the pesticide for one use common to all jurisdictions, and then all users would be faced with the problem of making an off label decision with no label information to guide them.

- 12. Should pesticide legislation allow any flexibility to users in the way the pesticide is used and for what purposes?**
- 13. If so, what variations from the label should be permitted?**

## **Training commercial users of pesticides**

Increasing the level of competency of pesticide applicators is one of the best ways of reducing the potential risks of using pesticides. A trained applicator who understands the principles of responsible pesticide application, the occupational hazards involved and the environmental damage that could result from misuse, is best able to minimise potential harm.

Commercial pest control operators, crop spraying contractors and aerial spraying operators are all required to be trained to a high level before they can be licensed under their respective legislation. However, other commercial applicators, such as farmers, local and state government employees, professional gardeners etc, are not required to be trained, even though, collectively, they account for the great majority of pesticide application events.

In the mid 1990's, FarmCare WA - now called ChemCert WA Inc,- established a number of courses to train commercial applicators in the safe and effective application of pesticides. The courses, which are not compulsory, are principally intended for farmers, but are relevant to all commercial applicators. In fact, many private and government employers have made ChemCert Accreditation a requirement of continuing employment for their employees, as have all Quality Assurance programs in agriculture.

The "basic" ChemCert course is mapped to the competencies required of an AQTF Level 3 course. Other ChemCert courses are offered at Levels 2 and 4, but not all are yet mapped to the competencies. These courses are delivered in all jurisdictions.

The concept of such courses has been very successful in the 10 years or so that they have been delivered in WA. To date, over 18,000 people – mainly farmers – have been ChemCert accredited. Nationally, the figure is well over 250,000 people.

In 1997, the then Minister for Agriculture (Monty House MLA) agreed to implement the recommendations of a report from Murray Criddle MLC (the so-called Criddle Report) following his review of agricultural chemical legislation and their effects on diversification in agriculture. These recommendations form the basis for new regulations which are soon to be introduced into the State Parliament under the Biosecurity and Agriculture Management Bill.

The Criddle recommendation of relevance at this point is that it should be mandatory for commercial operators (ie, everyone who applies pesticides except home gardeners) to be trained to a minimum level prescribed in the Regulations. The recommendation also included private and government employed advisers and consultants to the agricultural sector.

Mandatory training is already a requirement in NSW for all commercial chemical use, and South Australia for Schedule 7 and Restricted Chemical Products only. In Victoria, users of Restricted chemicals (= prescribed in Regulations) must hold an Agricultural Chemical Users Permit issued by the Department of Natural Resources and Environment. The WA Department of Health has also been considering mandatory training for Schedule 7 pesticide users.

Despite the success of the voluntary ChemCert courses, it is estimated that up to 20,000 more people could be trained if mandatory training were to be introduced. The advantage of mandatory training is that it reaches those chemical users who would not seek voluntary training, and who could be responsible for a disproportionate share of undesirable pesticide impacts.

The disadvantage of mandatory training is that it imposes a time and financial cost burden on individuals and industries, and could be seen by many as yet another example of government interference in their activities.

It will obviously take time for this many people to be trained, so a period of time will have to elapse after the proclamation of this regulation, before it becomes an offence to apply a pesticides without training.

The training of people whose first language is not English presents special problems. Many of these people cannot read the pesticide label well enough to be fully aware of the risks, and safety precautions they should take. ChemCert WA, (as well as ChemCert in other jurisdictions) have conducted courses in Vietnamese using an experienced, and bilingual, trainer. However, this opportunity is not always available, and it would be useful if other options could be used.

Another issue to be considered is the level at which mandatory training should be established. AQTF Level 2 courses provide basic awareness training for people who will be applying chemicals under direct supervision. Level 3 courses are for operators who will be selecting, preparing and applying pesticides without supervision, and Level 4 courses are for supervisors and managers who make weed and pest control decisions, and who may employ others to carry out spray applications.

The problem is, at what Level do you set the mandatory training? Almost all training of farmers and others by ChemCert has been at Level 3. However, mandatory training may see an increase in the proportion of people seeking training with lower levels of literacy and numeracy, and with non-english speaking backgrounds. These people may find that Level 2 accreditation more attainable. It is worth noting that NSW has set its mandatory training requirement at Level 2.

- 14. Should training commercial applicators be made mandatory by regulation?**
- 15. What length of time should elapse before such training becomes enforceable?**
- 16. At what level should such training be set?**
- 17. Should training be restricted to any class of chemical?**
- 18. How should people with non-English speaking backgrounds be trained or receive sufficient and effective safety information?**
- 19. What do you believe would be the impact of such requirements?**

### **Pesticide Spray Drift Issues**

There has always been a degree of public concern over the undesirable effects of pesticides, particularly with respect to spray drift and the effects of human and non-target crop exposure. Non-target spray drift is clearly an

infringement of individual rights and it is understandable why landholders become concerned when neighbours, without their knowledge, are spraying pesticides that may be injurious to the landholder's enterprise, particularly when the potential for spray drift, and damage to the enterprise, is high.

Apart from the non-target effects of spray drift, there are impacts on the owner of the crop that has been sprayed, notably the reduction of income from poor pest control due to the loss of chemical from the target.

Licensed spray operators (crop spraying contractors and aerial spraying operators) have a responsibility under their respective licensing regulations to minimise the incidence of spray drift and therefore the potential for damage. Under the *Aerial Spraying Control Act 1966*, for example, the pilot is not allowed to spray within prescribed Hazardous Areas, and under the associated *Regulations*, is not allowed to spray anywhere when there is a likelihood of spray drift damaging a susceptible crop.

Landholders who apply pesticides on their own property have a duty of care to minimise the effects of spray drift on their neighbouring properties. Many voluntary Codes of Practice and Quality Assurance systems have strict guidelines to address this issue. Examples of such QA schemes are SQF 2000 and 1000, FreshCare, CattleCare, Woolworths Quality Scheme, etc. Unfortunately, not all growers have adopted these schemes although their uptake is increasing.

The APVMA is at an advanced stage of developing its policy towards managing spray drift risk at the registration stage. It has produced a draft policy paper entitled, "Operating Principles and Proposed Registration Requirements in relation to Spray Drift Risk". When completed, this policy will require pesticide registration applicants to assess the spray drift risk of their product, having regard to a number of factors, eg method of application, and make spray drift mitigation statements on the product label. This information will assist users of the pesticide to adjust their application practices to minimise spray drift.

In order to assist pesticide users to exercise their responsibilities, regulatory action may be possible in a number of areas:

- Spray Drift Offences
- Prior notification of neighbours
- Buffer or Awareness Zones
- Land Use Planning
- Incident Reporting

### *Spray Drift Offences*

Recently, there has been an increase in the calls from stakeholders for government to take a tougher stance on pesticide applicators who cause non-target spray drift. At first glance it would seem that "causing spray drift" should

become an offence in the regulations, however, this could cause considerable problems in gathering sufficient evidence to support a prosecution.

Other jurisdictions have approached this problem in different ways. In Tasmanian legislation, agricultural spraying which “adversely affects” any person, plant, animal etc is an offence, however, “adversely affects” is defined in terms of creating an excessive residue in the plants etc. This significantly limits the opportunities for prosecuting environmental damage cases, a problem acknowledged by the regulating agency.

In New South Wales, and Victorian, legislation, the use of a pesticide which “causes harm” (in NSW) and “injuriously affects” (in VIC), non-target animals or plants are offences. However, in NSW no offence is created if the damage is limited to the property of the person spraying the pesticide, and in Victoria, a defence is to prove that the injuriously affected plants or stock “had no economic value”. The Victorian government has used this provision to mount several successful prosecutions.

In WA, the concepts of “environmental harm”, “material environmental harm”, and “serious environmental harm” have recently been introduced in the *Environment Protection Act 1986* to complement the original definition of “pollution”. These terms have been broadly defined and could include environmental damage by off-target pesticide application. It could therefore be argued that spray drift that causes environmental damage does not need additional regulation in WA, however, a provision similar to the Victorian regulation has been included in the proposed Biosecurity and Agricultural Management Bill.

An alternative approach is to make ‘non-compliance with conditions’ the offence, so that after a reported spray drift incident, the applicator is given a written warning which would contain conditions under which spraying in the same situation is approved. If drift occurs again, and it is found to be as a result of non-compliance with the conditions specified, then the offence could be prosecuted.

- 20. How should spray drift offences be created and prosecuted in WA?**
- 21. Are the provisions of the *Environmental Protection Act* sufficient? Or should additional specific offences be created?**

#### *Prior notification of neighbours*

One of the issues that arose during the Criddle Review, was that people who lived very close to others who applied pesticides as part of their enterprises on their property, could not, in all cases, get information on the chemicals that were being applied. This information was required in a wide range of circumstances, ranging from marron farmers who were concerned about

pesticides drifting from the vineyard next door, to people with health concerns, particularly people with chemical allergies, to allow them to take precautionary action.

While most notifications would arise from agricultural application of pesticides, there may be situations in urban areas where this is also required, for example, when a termiticide is applied to a new building next door to a residence.

The Criddle Report recommended that a regulation under the Biosecurity and Agriculture Management Bill be drafted, that would require a person to provide his or her immediate neighbour, on written request, with information on his/her spraying program, the details of which would be as agreed between the parties.

The Bluegum timber industry in the southern part of WA has introduced the concept of a “spray drift agreement” (which they call a “Protocol”) with all immediate neighbours to their plantations. This has had the effect of greatly improving relations between the industry and the community, which had expressed concerns about the impact of the plantations and aerial spraying.

It is not envisaged that this requirement would be invoked in all cases. For example, it is unlikely that two adjoining cereal growers would require to be notified with daily details of each others spraying program, as they are both likely to use similar chemicals and both face similar risks from spray drift. However, in this case an annual notification with approximate application dates is likely to suffice, if any notification is required at all.

However, a marron producer would likely require the details of all spraying taking place on the timber plantation or vineyard next door, as the marron are at risk of annihilation every time spraying takes place. In this case, an annual notification may be required plus daily notification of spraying with an agreed period of notice, and possibly the use of effective buffer zones.

One problem that arises is in the definition of a neighbour. Should a neighbour be defined by distance from the property to be sprayed, on the basis of contiguity, or some other defining characteristic? The simple way of doing it is to restrict the requirement to adjoining and contiguous neighbours. This would be sufficient in most cases, but in areas of the South West, there may be many very small properties within spray drift distance of the property applying the pesticide, that are not “next door” by the accepted understanding of this term.

Absentee landholders also present problems, because they cannot easily be contacted for information about their spraying program, or to receive information of their neighbours.

Another problem may arise when there is an urgent need to control a pest on a crop when the weather conditions are suitable, thus making prior notification

difficult. If this is a likely occurrence, then it will have to be built in to the notification process between the parties.

Currently, only Tasmania has a neighbour notification requirement, and that is subject to a written request to the Director General of Agriculture who, if he approves the request, directs the neighbour to supply the information. This imposes an administrative burden on the Department of Agriculture, but has the advantage of discouraging frivolous requests for notification.

- 22. What do you believe are the advantages and disadvantages of regulating prior notification of neighbours of pesticide use?**
- 23. How should a neighbour be defined for this purpose in the legislation?**
- 24. How best could a notification scheme be implemented in the event that a party was not available to notify or be notified?**
- 25. Should a notification scheme be limited to agricultural use of pesticides or should it include urban use as well?**
- 26. Are there other methods that could be adopted in legislation to effect a satisfactory notification scheme?**

#### *Buffer or Awareness Zones*

The concept of mandatory buffer zones to reduce the impact of pesticide spray drift is not new. However, despite repeated calls from stakeholders, implementation of buffer zones requires careful consideration.

It is questionable whether buffer zones are either effective or practicable in overcoming **all** spray drift problems. The very presence of a buffer zone implies that pesticides will not drift beyond the length or breadth of the buffer, and that spraying up to the boundary of the zone is safe. In other words they can engender a false sense of security as in some cases the buffer zone will be patently inadequate, while in others it will be excessive and a waste of expensive and useful land.

The effectiveness of a buffer zone is dependent upon many factors, such as the distance from the spraying, but the height and density of the buffer (if it is vegetated), the terrain, local wind speeds and directions, the susceptibility of the crop, and the nature of the pesticide itself.

The Queensland Department of Natural Resources introduced the concept of a minimum spray drift buffer zone in their 1997 "Planning Guidelines: Separating Agricultural and Residential Land Uses". The Guidelines specify a minimum total spray drift buffer width of 40 metres, consisting of 20 metres planted with trees and shrubs, and at least 10 metres clear of vegetation on either side of the vegetated area. The guidelines allow variations to this

requirement to allow for application method, chemical formulation, weather conditions etc.

The mandatory requirement for a buffer zone will be, in the case of existing and established property boundaries, very difficult, if not impossible, to comply with, as the buffer will not have been allowed for in the land use of the properties. It is only in new subdivisions that it could be possible.

A further difficulty is the impact of such a requirement on Local Government Planning Schemes. The creation of buffer zones is recognised as a legitimate planning tool to separate incompatible land uses, where it can still be imposed. However, it is also recognised that buffer zones will not totally eliminate all the impacts of activities.

An alternative approach is to consider the concept of Spray Drift Awareness Zones (SDAZ). An Awareness Zone is established by each landholder based on the chemicals he/she uses, the sensitivity of the human, structural, agricultural and environmental components within the immediate vicinity of the property. It should be mapped on a paddock by paddock basis as the focus of the Zone shifts across the property. It is, in effect a method of conducting a spray drift risk management assessment for the property.

The SDAZ was introduced in the “Code of Practice for the Use of Agricultural and Veterinary Chemicals in Western Australia”, following its inception in the publication “Spray Drift Management, Principles, Strategies and Supporting Information”. It may include the use of buffer zones (both linear and vegetated ones) if appropriate, but it is not limited by prescribed distances as these will depend entirely on the specific circumstances of each Zone.

- 27. Should legislation prescribe mandatory buffer zones?**
- 28. If so, please explain how these would be imposed in practice, and what their minimum dimensions should be?**
- 29. What are the advantages and disadvantages of the SDAZ concept, in comparison to buffer zones?**
- 30. How could SDAZ’s be mandated? Through legislation, or through a Code of Practice, as it is currently?**

### *Land Use Planning*

Local Government Planning Schemes are an important element in the minimisation of spray drift risk, particularly in rural areas. In any current Planning Scheme, which recognises land zoned for rural purposes – sometimes with varying degrees of priority – agricultural pursuits can be established on adjoining land that may be incompatible. Incompatibility can be due to dust, noise, smell and fugitive light, however, a frequent reason is the risk of spraydrift from one property to another.

In such a situation, the relevant local government authority may not be able to redress the situation as both agricultural pursuits are covered by the Planning Scheme. However, local governments could require landholders to seek approval before certain enterprises were established, or alternatively develop pre-approval conditions that included spraydrift minimisation elements.

Such conditions could include:

- Compliance with the “Code of Practice”,
- The inclusion of a buffer zone (both horizontal and vertical) between the adjoining land holdings, or the development of a Spray Drift Awareness Zone,
- The development of a Spray Drift Agreement between the parties, along the lines of the Protocol that is prepared by Bluegum Timber plantations and their neighbours.
- Other appropriate conditions as required.

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| <b>31. How can planning laws/schemes be used to minimise spray drift risk?</b> |
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### *Incident Reporting*

Currently, there are a number of ways that a member of the public can register a complaint about a pesticide application, for example:

- If a customer is dissatisfied with the work of a licensed pest control operator, he/she can contact the Environmental Health Division of the Department of Health or the Department of Community and Employment Protection.
- Similarly, if a farmer wishes to complain about the activities of an aerial spraying operator, he can report the incident to the Director General of Agriculture under section 14 of the *Aerial Spraying Control Act 1966*.
- The Mt. Barker community can use an Incident Reporting Form produced by the Department of Health following a recommendation of the Community Consultative Group established to consider the problem of aerial spraying in the Blue-gum timber plantations in the district.
- He or she can lodge an application to the APVMA under its Adverse Experience Reporting Program for agricultural chemicals.
- Of course, a member of the public can contact any government agency – probably Health, Agriculture, CALM, Fisheries or Environment, or their respective Ministers, to register a complaint.

The number of complaints received by the above disparate processes is minimal. Therefore the government does not know whether there really is no pesticide problem, or that there is significant under-reporting because most people do not know who to contact or what the outcome will be.

This raises the question of the role of government in the provision of advice on, and response to, pesticide incidents. This role could be limited to providing general advice on the management of pesticide incidents (leaving the parties to resolve the issue) and the investigation of regulatory breaches. However, the government could also take on a much more active role in soliciting and responding to pesticide incidents, including site visits and intervention between the parties.

Notwithstanding the role that government adopts, there appears to be a need for a single, one-stop point of contact for members of the public to report a pesticide mishap or register a complaint, irrespective of the agency with the legislative responsibility for the problem. In addition, it is preferable that the same officers investigate all reports, so that they can build up a level of expertise in the area, and bring to bear their accumulated experience across a number of investigations.

However, it is not yet clear whether reports should be investigated solely for evidence of non-compliance under legislation, or whether the investigation should be also made available to one or more parties which are planning civil action through the courts.

Different ways of managing the problem of reporting complaints are:

- Provide it as a fully taxpayer funded service.
- Provide it as a taxpayer funded service for those investigations that are used to prosecute an offender under legislation, and charge a fee-for-service to complainants who wish to take civil action against the alleged perpetrator.
- Charge a fee-for-service for all investigations.
- Encourage the professional private consulting industry to investigate complaints.

If the government wishes to obtain an accurate picture of pesticide misuse through public complaints and reports, then it must fund the activity. To charge fees means that some reports and complaints may not be made and the problem may again be under-reported.

In 1991, Tasmania established the Spray Information and Referral Unit within the Chemical Management Branch of the Department of Primary Industries, Water and Environment. The Unit is unique in Australia in that it provides for administration of the Codes of Practice and legislation applying to spraying operations, while also playing a negotiation and mediation role between pesticide users and affected parties.

The Unit has been successful in resolving many of the concerns reported to it, through negotiation and mediation. Concerns by neighbours to spraying activities have often been resolved by opening communication channels between neighbours and ensuring that each party is well aware of the rules governing spraying in Tasmania.

In the case of aerial spraying, this has meant bringing the requirements of the Tasmanian Code of Practice for Aerial Spraying to the attention of neighbours and ensuring pilots and contractors are aware of the sensitivities of interested parties.

In WA, the Department of Agriculture administers the *Agricultural Practices (Disputes) Act 1995*. This Act provides for the resolution of disputes by mediation, between agricultural neighbours, and agricultural and non-agricultural neighbours, regarding spray drift incidents, as well as other issues such as noise and dust. Most enquiries to the Department under the Act are for spray drift incidents, however, not all enquiries develop into cases which require mediation. A Unit established in WA, similar to the Tasmanian Unit, could become responsible for administering the Act

Further details of the Tasmanian Unit are provided in Appendix 3.

- 32. What is the role of government in the provision of advice to minimise spray-drift?**
- 33. What are your views on the need for a “single – desk” pesticide incident reporting service in WA?**
- 34. Which government agency should be responsible for managing such a Unit?**
- 35. Should such a Unit charge fees, at least in part?**
- 36. Has the Unit in Tasmania features that would be worth evaluating for adoption in WA?**
- 37. How should the government continue to administer the *Agricultural Practices (Disputes) Act 1995*, or at least the mediation process it covers?**

### **Protection of Especially Sensitive Areas**

It is possible to identify a number of situations and places which are very sensitive to exposure to pesticides and which justify some level of protection, including total prohibition.

These can be categorised depending on the level of protection they need:

(1) Total Prohibition

- Organic Farms: These must be, by definition, pesticide free, therefore there can be no tolerance to pesticide exposure at all.

(2) External application prohibition: These are situations that should not be exposed to external sources of pesticide, but can use approved pesticides internally under certain conditions:

- Schools, hospitals, nursing homes
- Aquaculture - farms (eg Marron):

- Habitable dwellings: This would include single houses, as well as towns and cities.

In these cases, a regulatory model can be found in the Commonwealth Air Navigation Ordances which prohibit an aeroplane used for aerial spraying operations from flying within 100 metres horizontally and vertically of a habitable dwelling.

(3) Conditional Protection: These are situations where specific pesticides can be approved for use, either generally or on a case-by – case basis.

- Water Catchment Areas: An approval to use system is being developed jointly by the Water Corporation and PeAC.

**38. Should legislation be used to regulate pesticide use in pesticide-sensitive situations?**

**39. If so, what criteria should be used to select such situations, and how should this be achieved?**

## **Record Keeping**

Keeping good records of all commercial spraying activities is one of the most effective ways of reducing the risk of pesticide damage. Such records provide protection for all parties in the event that an alleged spray drift damage report is investigated. In addition, they can assist the farmer or operator in making good management decisions on the property.

All Quality Assurance schemes operating on farms require record keeping of all operations, not just pesticide applications, in order to maintain accreditation.

Compliance with industry Codes of Practice also require accurate and comprehensive records to be kept.

Mandatory record keeping of pesticide spraying activities is required in NSW, and conditionally/partially in Queensland, Victoria and Tasmania. In South Australia and the Northern Territory, mandatory record keeping are regulatory proposals. In WA, currently only aerial operators are required to keep records of spraying activities, but the proposed Biosecurity and Agriculture Management Bill will require this for all commercial operations when the Regulations to the new Act are proclaimed. In all jurisdictions, domestic pesticide users are exempt from mandatory record keeping.

For such records to have any value, there is a basic set of information that should be maintained:

- The operator's name
- Location of the spraying activity

- Name(s) of pesticides used
- Weather conditions at time of application
- Crop or situation details
- Reason for application
- Area treated
- Date and time of application
- Effectiveness of application.

**40. Should record keeping of pesticide applications be required by legislation, or can it be left to QA schemes and industry Codes of Practice?**

**41. What should a prescribed minimum set of information to be recorded consist of?**

### **Licensing Pest Control Operators**

Since the inception of the *Health (Pesticides) Regulations 1956*, commercial Pest Control Operators (PCO) have been required to be licensed. This is currently administered by the Environmental Health Directorate of the Department of Health.

A PCO is anyone who applies a pesticide for reward and includes urban PCO's, agricultural crop sprayers and some green keepers (depending on whether they require access to Schedule 7 chemicals). The Regulations currently exclude aerial spraying operators, and employees who may apply pesticides on land or premises owned or under the control of their employer. The Regulations also require a Pest Control Business to be registered with the Department of Health.

The Regulations that deal with PCO licensing have recently been reviewed in detail, and are in the process of being harmonised with similar regulations in other jurisdictions.

### **Licensing of Aerial Operators**

As previously mentioned, aerial spraying contractors are currently regulated by the Department of Agriculture under the *Aerial Spraying Control Act 1966*. This requires all aerial spraying pilots, operating in WA, to maintain a current Pilot Chemical Rating Certificate. However, there are only about 40 aerial spraying pilots operating in WA, and it was a recommendation of the Criddle Review that, for administrative efficiency and uniformity, the "licensing" of these pilots should be transferred to the Environmental Health Directorate of the Department of Health (who already licence pest control operators and crop spraying contractors). At the same time, it was agreed that the Aerial Spraying Act should be repealed as a consequence of the passage of the Biosecurity and Agricultural Management Bill.

The Department of Health agreed to this proposal and advised that the inclusion of aerial spraying contractors into the licensing system could be effected by removing the exemption for licensing aerial operators that is currently Regulation 63 (1) (b). It was agreed at the time that this would not significantly add to the work load of the Department of Health's licensing section, however the Departments of Agriculture and Health are discussing the practical implications of this.

Currently, aerial spraying contractors obtain their Certificate by studying a Manual supplied by the Department of Agriculture and passing a written examination. Both the Manual and examination are becoming dated, and the proposal to transfer the licensing function to the Department of Health is a good opportunity to introduce a better method of assessing the competency of the applicant.

The Aerial Agricultural Association of Australia (AAAA), which is the professional body representing the aerial spraying industry, has developed an industry training and accreditation system called "SpraySafe". This scheme could form the basis of training and assessing the competency of aerial spraying pilots, however, national regulatory reliance on this could effectively mean a legislated monopoly, as well as compulsory membership of the AAAA.

The alternative would be to update the current State manual and examination, but this would not necessarily ensure national uniformity. This is an important requirement in an industry whose pilots regularly operate interstate to take advantage of seasonal crop spraying opportunities.

Another issue is the current requirement in WA for aerial contractors to hold third party damage insurance to a minimum amount of \$30,000. This amount was set in 1966 when the Act was passed and has not been amended since. In WA, ground based crop spraying contractors are not required to hold insurance under the *Health (Pesticides) Regulations 1956*. It could be argued that insurance is a matter for the individual company and not for government to mandate, however, it could equally be argued that victims of pesticide spray damage need to be assured that any claims for compensation can be met.

These and other issues are currently being discussed by the National Aerial Spraying Licensing Working Group, whose aim is to develop an agreed set of national aerial spraying licensing principles, upon which jurisdictions could base their legislation, and which would allow for full portability between jurisdictions.

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| <p><b>42. How should the competency of aerial pesticide applicators be determined?</b></p> <p><b>43. Should regulations require applicators to hold third party damage insurance?</b></p> <p><b>44. What other licensing requirements would you like to see imposed upon aerial spraying operators?</b></p> |
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## **Pest Management Registration Board**

A significant proportion of the complaints about the pest control industry, do not just relate to issues of public health, but to consumer and customer concerns over the effectiveness of the work performed, and the activities of salespersons. Incidents of this nature should be addressed by the Department of Consumer and Employment Protection, however, it is often difficult to separate the issues and ensure that an appropriate response is provided to the complainant.

In addition, a number of the licensed PCO's are agricultural crop spraying contractors, complaints about which the Department of Health has not always been technically able to address as very few, if any, of these complaints have health implications. The addition of a number of aerial spraying operators to the licensing system will only add to the complexity of the task which currently the Department of Health has to manage alone.

One solution to this problem is to consider the concept of creating a Registration Board to control the pest control industry, along the same lines as the Registration Boards which manage plumbers, builders, and other trades.

Such a Pest Management Registration Board (PMRB) would only deal with matters involving the licensing of individual pest control operators and any issues of non-compliance by these operators. The Board would be industry driven as it would comprise a majority of industry representatives and relevant government agencies, such as Health, Agriculture, Worksafe and Environment and be self funded from license fees. The Board would refer technical issues to the relevant government agency for investigation, who would also be able to prosecute an individual operator for breaches of their legislation. Training requirements for the industry (in line with national standards) would also be determined by the Board.

The advantage of this proposal is that it would allow a significant level of industry self regulation, without government losing the ability to prosecute for legislative breaches. While Boards can also be a useful avenue for gauging industry practices, they may have the disadvantage of being directed by their members independently of the strategic policy direction of the government of the day. In addition, the Board can become focussed on industry needs rather than the needs of the wider community.

Another option may be to develop a Code of Conduct under the *Fair Trading Act 1987*, in conjunction with the Pest Control Industry. This Code would establish and control the activities of the industry and its interaction with consumers. It has been readily accepted by some industries as a flexible and workable method to establish minimum standards of service and behaviour in the industry.

- 45. Should the Department of Health continue to regulate and license the Pest Control Industry, or should that responsibility be undertaken by a Registration Board or by some other mechanism?**
- 46. How can legislation ensure that the Pest Control industry, including agricultural and aerial spraying contractors, complies with the conditions of license of its members?**

### **Disposal of waste pesticides and containers**

The *Health (Pesticides) Regulations 1956* provides details of the approved methods of disposing of waste pesticides and pesticide containers, and the process for seeking approvals from the EDPH for other disposal methods.

The majority of waste pesticide containers generated by agricultural industries are now disposed of through the DrumMuster scheme administered by Agsafe Ltd in conjunction with local government authorities in all jurisdictions. The scheme has been in operation for over 6 years and is very successful. DrumMuster has arrangements with 99% of all LGA's, has disposed of over 6.5 million used pesticide containers, with a total weight of almost 9200 tonnes!

Agsafe Ltd also launched (in 2005 in WA) an industry-led scheme for the disposal of waste pesticides. This scheme is called ChemClear, and relies on waste owners "booking" space for their waste on a truck run which will come through their locality. The disposal of waste registered chemicals is free, however, there are charges for some unregistered and unknown chemicals.

Both of these schemes are good examples of industry –led programs that comply with regulatory requirements and do not rely on government resources to make them work. Such schemes should be promoted where possible.

- 47. How can a regulatory scheme assist this industry-led process?**

## GLOSSARY

|                        |   |
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| <b>AERP (Ag):</b>      | Adverse Experience Reporting Program for Agricultural Chemicals   |
| <b>Agvet Code:</b>     | Agricultural and Veterinary Chemicals (Code) Act 1994 (Cwlth)   |
| <b>APVMA:</b>          | Australian Pesticides and Veterinary Medicines Authority (formerly the NRA).  |
| <b>AQTF:</b>           | Australian Quality Training Framework   |
| <b>BAMB:</b>           | Biosecurity and Agriculture Management Bill - new consolidating legislation proposed by the Department of Agriculture.                                      |
| <b>Buffer Zone:</b>    | An area of land, whether vegetated or not, located on the downwind side of a sprayed area, and which is used to protect an area susceptible to spray drift. |
| <b>ChemCert WA:</b>    | An independent, non-profit organisation which provides training in the safe and effective use of pesticides.  |
| <b>COP:</b>            | Code of Practice  |
| <b>Criddle Review:</b> | The Review of agricultural chemical legislation and policies in WA that was undertaken by Murray Criddle MLC in 1996/97.                                    |
| <b>EDPH:</b>           | Executive Director Public Health – a statutory position in the Health Act 1911.   |
| <b>FSANZ:</b>          | Food Safety Australia New Zealand – a Commonwealth agency responsible for setting food safety standards.  |
| <b>FSC:</b>            | Food Standards Code – a reference manual of food safety standards, including MRL's for pesticides in foods.   |
| <b>MRL:</b>            | Maximum Residue Limit.  |
| <b>NRA:</b>            | National Registration Authority for Agricultural and Veterinary Chemicals (now the APVMA).  |
| <b>PCO:</b>            | Pest Control Operator.  |
| <b>PeAC:</b>           | Pesticides Advisory Committee – a statutory committee set up under the Health Act 1911.   |
| <b>PSIC:</b>           | Product Safety and Integrity Committee – a national policy developing committee for pesticide and fertiliser control matters.                               |
| <b>SDAZ:</b>           | Spray Drift Awareness Zone.   |



## **APPENDIX 1**

### *National use Controls for Agricultural Chemicals*

**PESTICIDE (Agricultural Chemicals) OFF-LABEL USE PROVISIONS  
UNDER EXISTING STATE CONTROL OF USE**

| Controls                      |   | QLD   | NSW | ACT | VIC   | TAS | SA  | WA  | NT  |
|-------------------------------|---|---|-----|-----|---|-----|-----|-----|-----|
| <b>RATES</b>                  | Use a <b>lower rate</b> than that shown on the approved product label                                 | YES<br>(unless instruction states must not be used at lower rate)                 | YES | NO  | YES<br>(subject to conditions and certain restrictions) | YES | YES | YES | YES |
|                               | Use at a <b>lower frequency</b> than that shown on the approved product label                         | YES<br>(unless instruction states must not be used at lower frequency)            | YES | NO  | YES<br>(subject to conditions and certain restrictions) | YES | YES | YES | YES |
|                               | Use a <b>higher rate</b> than that shown on the approved product label                                | NO  | NO  | NO  | NO  | NO  | NO  | NO  | NO  |
|                               | Use at a <b>higher frequency</b> (ie. more often) than that shown on the approved product label       | NO  | NO  | NO  | NO  | NO  | NO  | NO  | NO  |
| <b>PESTS</b>                  | Use on a <b>different pest</b> in a crop/situation already shown on the approved product label        | YES<br>(unless instruction states must not be used to control the different pest) | NO  | NO  | YES<br>(subject to conditions and certain restrictions) | YES | YES | NO  | YES |
| <b>CROPS &amp; SITUATIONS</b> | Use on a <b>different crop or situation</b> not shown on the approved product label                   | NO  | NO  | NO  | YES<br>(subject to conditions and certain restrictions) | NO  | NO  | NO  | NO  |
| <b>APPLICATION EQUIPMENT</b>  | Use via <b>different application equipment</b> and/or method than shown on the approved product label | YES<br>(unless the instruction states the alternate method must not be used)      | NO  | NO  | YES<br>(subject to conditions and certain restrictions) | NO  | NO  | NO  | NO  |

## OTHER LEGISLATIVE REQUIREMENTS FOR THE USE OF PESTICIDES

| Controls   |   | QLD   | NSW   | ACT                                | VIC                                    | TAS                                     | SA                     | WA                   | NT  |
|--|---|---|---|------------------------------------|--|---|------------------------|----------------------|-----|
| <b>RECORD KEEPING</b>                                | <b><u>Records of use must be maintained</u></b>           | YES<br>(Commercial and contractors plus where required by Reg's only) | YES   | NO                                 | YES<br>(S7, RCP's and Commercial only) | YES<br>(Commercial & Occupational only) | NO                     | YES<br>(Aerial only) | NO  |
| <b>TRAINING AND LICENSING OF USERS AND OPERATORS</b> | General <b>user (farmer/commercial) training required</b> | NO  | YES   | YES<br>(Commercial only)           | YES<br>(S7 & RCP only)                 | NO                                      | YES<br>(S7 & RCP only) | NO                   | NO  |
|  | <b><u>Licensing of commercial operators</u></b> required  | YES   | YES<br>(Aerial & PCO's only)                  | YES                                | YES                                    | YES                                     | NO                     | YES                  | YES |
| <b>NEIGHBOUR NOTIFICATION</b>                        | Required for general pesticide use                        | YES<br>(only if required by label)                                    | NO  | YES<br>(S7 only)                   | NO                                     | NO                                      | NO                     | NO                   | NO  |
|  | Required for vertebrate poisons                           | YES   | YES<br>(only if specified in a control order) | YES<br>(only if required by label) | NO                                     | YES<br>(1080 only)                      | NO                     | YES<br>(1080 only)   | NO  |

Users of this table should check the information with their respective State legislation and use the information as a guide only as requirements and legislation are subject to change. In addition, the information in this table is not to be taken as legal advice in any specific situation.



## **APPENDIX 2**

### *Western Australian Government Agency Responsibilities and Legislation Relating to Pesticides Controls*

#### ***Department of Health***

##### *Responsible for:*

- Control of Use of Pesticides and Poisons
- Licensing PCO's and Fumigators
- Providing advice on the safe use of pesticides, and the control of public health pests.

##### *Legislation:*

- Health Act 1911 and Regulation
- Poisons Act 1964 and Regulations

#### ***Department of Agriculture***

##### *Responsible for:*

- Providing advice on the safe use of pesticides, and the control of agricultural pests.
- Issuing Pilots Chemical Rating Certificates
- Some (agricultural) aspects of control of use of pesticides

##### *Legislation:*

- Aerial Spraying Control Act 1966
- Agriculture and Related Resources (Spraying Restrictions) Regulations 1979
- Agricultural Produce (Chemical Residues) Act 1983
- Biosecurity and Agriculture Management Bill (proposed)

#### ***Department of Industry and Resources***

##### *Responsible for:*

- Controls over, and providing advice on, the storage and transport of dangerous goods
- Analytical services for pesticide residues through the Chemistry Centre.

##### *Legislation:*

- Explosives and Dangerous Goods Act 1961, and Regulations
- Dangerous Goods (Transport) Act 1998, and Regulations

## ***Department of Consumer and Employment Protection***

### *Responsibilities:*

- Controls over, and providing advice on, occupational safety in the workplace.
- Protection of consumer interests through fair trading legislation.

### *Legislation:*

- Occupational Safety and Health Act 1984, and Regulations.

## ***Department of Fisheries***

### *Responsibilities:*

- Providing advice on the impact of pesticide exposure by commercial fish and crustacea.

## ***Department of Environment***

### *Responsibilities:*

- Regulatory control over environmental damage and pollution.
- Environmental Impact Assessment of development proposals.

### *Legislation:*

- Environmental Protection Act 1986 and Regulations

## **APPENDIX 3**

### *Tasmanian Spray Information and Referral Unit*

The Tasmanian Spray Information and Referral Unit consists of one full time officer located in the Chemical Management Branch of the Department of Primary Industries, Water and Environment, and is based in Launceston. A new "Compliance Officer" position is to be advertised shortly. The Officer seeks the assistance of other officers from the Department (eg environmental specialists) as required.

The Unit is fully taxpayer funded, and all investigations are conducted with compliance with the legislation and Codes of Practice as the aim. No investigation is carried out as part of a civil action between parties, and therefore no fees or charges are raised against complainants.

The Unit investigates all spray incidents referred to it, both aerially or ground applied, and whether it is of agricultural, forestry or urban PCO origin. In recent times, most incidents have been of forestry origin, reflecting the importance of that industry in Tasmania, and the fact that aerial operations are much more likely to be noticed than ground operations on farms. The Unit believes that spray drift problems in agriculture are under reported, and will use the proposed new Code of Practice to raise awareness of the service offered by the Unit.

In as many cases as possible, the site of each referral is visited as soon as possible. This is seen as a very important part of the incident management process and many of the referrals are resolved at this point. Clearly, if legislation or Codes of Practice are being breached, then the Unit will obtain the evidence needed to launch a prosecution.



## **APPENDIX 4**

### *Pesticide Control of Use Legislation of Australian Jurisdictions*

Listing of the Acts includes appropriate Regulations. The listing excludes peripheral legislation dealing with (for example) occupational safety and health, and dangerous goods.

#### **Western Australia**

- *Health (Pesticides) Regulations 1956*
- *Biosecurity and Agriculture Management Bill (proposed)*

#### **Queensland**

- *Agricultural and Veterinary Chemicals Distribution Control Act 1966*
- *Chemical Usage (Agricultural and Veterinary) Controls Act 1988*

#### **New South Wales**

- *Pesticides Act 1999*

#### **Victoria**

- *Agricultural and Veterinary Chemicals (Control of Use) Act 1992.*

#### **Tasmania**

- *Agricultural and Veterinary Chemicals (Control of Use) Act 1995.*

#### **South Australia**

- *Agricultural and Veterinary Products (Control of Use) Act 2002.*

#### **Northern Territory**

- *Agricultural and Veterinary Chemicals (Control of Use) Act 2004.*